

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

VS.

DONEL MARCUS CLARK

Defendant.

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NO. 3-92-CR-238-G(07)

**FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Defendant Donel Marcus Clark, a federal prisoner, has filed a motion to proceed *in forma pauperis* in connection with the appeal of the July 3, 2008 order denying his motion for a sentence reduction under 18 U.S.C. § 3582(c)(2). For the reasons stated herein, the motion should be denied.

The standards governing *in forma pauperis* motions are set forth in 28 U.S.C. § 1915(a).

Under this statute:

[A]ny court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor.

28 U.S.C. § 1915(a)(1). The court must examine the financial condition of the applicant to determine whether the payment of fees would cause an undue financial hardship. *See Prows v. Kastner*, 842 F.2d 138, 140 (5th Cir.), *cert. denied*, 109 S.Ct. 364 (1988). In making that determination, the amount of money available to an inmate in his prison trust account or from other sources should be considered. *See id.*; *Braden v. Estelle*, 428 F.Supp. 595, 601 (S.D. Tex. 1977).

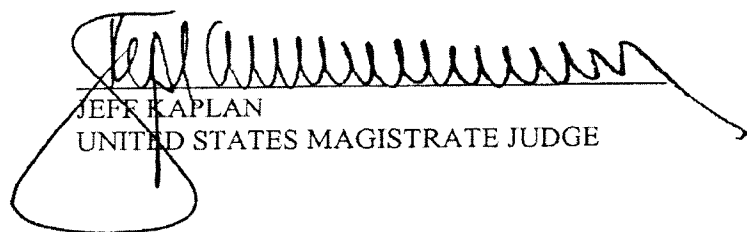
An account summary provided by defendant in support of his motion shows that he currently has \$2,010.63 on deposit in his inmate trust account. During the past six months, the average daily balance of the account was \$1,992.86. The filing fee for an appeal is \$455.00. *See* 28 U.S.C. §§ 1913, Misc. Fee Sch. & 1917; 5th Cir. LR 3. Because defendant is incarcerated, he has no living expenses. The court therefore determines that defendant is able to pay the appellate filing fee without causing undue financial hardship.

RECOMMENDATION

Defendant's motion to proceed *in forma pauperis* on appeal [Doc. #91] should be denied.

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party may file written objections to the recommendation within 10 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). The failure to file written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: August 19, 2008.


JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE